

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVIEW OF RULES PURSUANT TO EXECUTIVE ORDER EIGHT	DOCKET NO. INU-00-1
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ORDER REQUESTING COMMENT

(Issued January 31, 2000)

On September 14, 1999, Governor Vilsack issued Executive Order Eight, which requires the Utilities Board (Board) to comprehensively review its rules according to the criteria in the executive order. The executive order further requires the Board to submit a plan for review to the Governor's office by March 1, 2000.

Attached to this order is a proposed plan for the review of the Board's rules. This proposed plan will be posted on the Board's website, which is at www.state.ia.us/iub. All interested persons are invited to submit written comments on the proposed plan to the Executive Secretary, 350 Maple, Des Moines, IA 50319-0069 within ten (10) days of the issuance of this order. The Board will consider any comments received in developing the final plan to be submitted to the Governor's office.

IT IS THEREFORE ORDERED:

The attached Proposed Plan for Regulatory Review will be posted on the Board's website, and interested persons may submit written comments regarding the proposed plan to the Board within ten (10) days of the issuance of this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 31st day of January, 2000.

Iowa Utilities Division
Proposed Plan For Regulatory Review
January 2000

The Iowa Utilities Division (Division) prepared this plan for regulatory review of all of its rules to comply with Executive Order Number Eight, issued by Governor Vilsack on September 14, 1999.

Although the Division is a part of the Iowa Department of Commerce, the Division operates independently of Commerce in implementation of its statutes and rules. The Department of Commerce has no oversight authority over the Division with respect to rule promulgation or interpretation. Iowa Code § 546.2(6) (1999). Therefore, the Utilities Division plans to act independently of the Department of Commerce in its compliance with Executive Orders Eight, Nine, Ten and Eleven. The Utilities Division understands that all divisions within the Department of Commerce will be acting independently to comply with the four Executive Orders.

Goals and Principles

The Division has several goals in its rule review. We hope to significantly improve our rules by this process. We recognize that the viewpoints and suggestions by persons affected by our rules will be very helpful in drafting the best rules possible. Therefore, we will include opportunities for public input during the rules review. However, the Division does not regard the public input

phase as a negotiated rule making, and the Iowa Utilities Board (Board) will make the final decision regarding what rules will be proposed and adopted.

The rules will be reviewed according to the criteria in the executive order. When needed, rules will be eliminated or changed. In some cases, the structure or location of rules may be changed so they are more logical and meaningful.

The rules will be reviewed considering the following criteria, listed in Section III of Executive Order Eight:

A. Need. Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed to the extent that the rule should be amended or repealed? Is the rule effective and necessary to protect or safeguard the health, welfare, or safety of the people of this state? Is the rule broader than necessary to accomplish its purpose or objective?

B. Clarity. Is the rule written and organized in a clear and concise manner so that it can be readily understood?

C. Intent and statutory authority. Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop additional legislative authorization in order to protect the health, safety, and welfare of the people of this state?

D. Cost. Have the qualitative and quantitative benefits of the rule been considered in relation to its costs? Do the benefits exceed the costs of the rule?

E. Fairness. Does the rule result in the equitable treatment of those required to comply with it, and those affected by the rules in other ways? Should it be modified in any way to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection to those affected by the rules?

The Division must be sensitive to the impact changes in its rules have on the utilities it regulates and their customers. When rules are changed, often company tariffs, which are based on our rules, must be changed. Customer service employees in industry, at the Division, and at the Consumer Advocate Division of the Department of Justice (OCA) must be retrained. During rule review, the agency will consider the implications of rule changes on utilities and their customers.

Resources Required and Possible Exceptions Required

The Division rules are contained in 37 chapters. Many of the rules are extremely technical, complex, and lengthy. The rule review process will take a great deal of staff time, and the executive order establishes a short deadline. The review will be done during the time the Division may be required to implement approximately 40 to 50 rule makings as a result of the electric restructuring bill pending during the 2000 legislative session. The Division has been asked to cut its budget, rather than increase it to add staff to assist with the

large amount of additional work presented by the restructuring bill and Executive Order Eight. Therefore, the Division must structure the review to accomplish complementary tasks as efficiently as possible. This may involve combining review of the chapters relating to the electric industry with promulgation of new rules and revised rules pursuant to the electric restructuring bill, if the restructuring bill passes during the 2000 legislative session. This plan has been drafted without consideration of the effects of an electric restructuring bill. If an electric restructuring bill passes, the plan must be completely revised as to the many electric industry chapters to allow the restructuring rulemakings and the Executive Order Eight review to be accomplished simultaneously.

The telephone industry also is undergoing rapid change in Iowa that certainly will require rule changes, most immediately in the area of universal service. The review of existing rules must be coordinated with the development of new rules to establish appropriate policy for an evolving industry.

If the Governor continues to have agencies comply with Executive Order Eight without additional staff, the Division may need to request an extension of time to complete review and revision of certain chapters of the more complicated rules, particularly those related to regulation of the electric and telephone industries, beyond the December 31, 2002, deadline contained in Executive Order Eight. The Division will make every effort to comply with the deadline if possible. However, to ensure that review and revision of the rules is done in a meaningful way, it may be impossible to comply with the deadline.

Time Estimate

The resource demands for a complete review of the Division's rules will be substantial. The Division's rules occupy nearly one full volume of the Iowa Administrative Code, a larger number of rules than many other agencies have. This relatively large body of rules has proven necessary to the regulation of the significant and critical industries under the jurisdiction of the Division, and a careful review of all of these rules will require substantial staff time.

The Division recently completed the process of re-writing chapter four of its rules to reflect the new Iowa uniform rules relating to declaratory orders. This was a relatively simple proceeding, and was based upon uniform rules. However, the process of modifying those rules to accommodate the special needs of the agency, provide public notice, receive and analyze public comments (both written and oral), adopt the rules (with modifications to reflect the public comments where appropriate), and publish the adopted rules, required between 50 and 75 hours of staff time. In addition, in the Executive Order Eight review process, the Division will provide additional opportunities for public input prior to initiation of formal rulemaking.

Extrapolating from the revision of chapter four experience, and adding the additional hours required for the informal preliminary review process, the Division estimates that review of each chapter of rules from initial staff work through completion of the final rulemaking process will require approximately the following staff time. The Division has 21 chapters of rules we consider to be relatively short and simple. It is estimated each of these chapters will require

between 60 and 120 hours of staff time for review and modification. The Division has ten chapters of rules considered to be more complicated, and it is estimated it will take between 165 and 230 hours of staff time per chapter for review and modification of these chapters. The Division has five chapters of rules considered to be the most complicated, which will take between 320 and 800 hours of staff time per chapter to review and modify. This estimate of time does not include time required to draft new rules required by the electric restructuring bill.

This gives a total resource requirement of approximately 4,570 to 8,940 person-hours, or the equivalent of two and one-fourth to four and one-half full-time employees for a full two years, for a review of all Division rules.

Method of Review

Review of the rules will be done on a chapter-by-chapter basis, or by review of a group of chapters. In some cases, a chapter may be divided and the divisions reviewed as part of a larger group. The Division plans to assign one attorney or the legal assistant, and between one and four technical staff, to the review of each chapter or group of the rules. Some of the multifaceted chapters may have more than four technical staff assigned to them.

Division staff have determined that the only existing area where informal policies are required to be adopted as rules is the procedures for electric franchise and pipeline contested cases under Iowa Code Chapters 478, 479, and 479B. The Division's general procedural rules at 199 IAC Ch. 7 state that they do not apply to these types of cases, except with respect to appeals and

rehearings. These cases are relatively simple, and often involve unrepresented parties. Procedural rules need to be relatively simple. Therefore, the Division plans to promulgate procedural rules for these cases in a new Chapter 14. Division staff will draft proposed rules to be included in the review process. The time for creation and promulgation of a new Chapter 14 is not included in the above estimate of staff time.

The Board will issue an order that incorporates this plan for review at the time it submits the plan to the Governor. Many interested persons have signed up to receive all Board orders on a weekly basis. The Office of Consumer Advocate, utility companies, and other interested persons receive copies of all Board orders by this process. The Division will also publish the order on its website, to reach others who may be interested, but do not receive Board orders by mail. In the order, the Board will request that persons who are interested in participating in the rule review process send their names, addresses, telephone and fax numbers, and e-mail addresses (if any) to the Division. We recognize that not all participants will be interested in review of every chapter or group of chapters. For example, telephone utilities would probably not be interested in participating in rule review of chapters or groups pertaining only to the electric, gas, or water industry. The Board will request that persons state whether they wish to participate in review of all chapters or groups, or only in certain chapters or groups, which they will be asked to list. A list of interested participants will then be developed for each chapter or group of the rules.

The Division will assign staff to review each chapter of the rules, or a group of chapters. Division staff will then do an initial review of each chapter, or group of chapters, keeping in mind the principles contained in this plan and Executive Order Eight. Staff will then draft initial suggestions for changes to the chapter or group. These initial suggestions for change will be sent to all persons who have indicated an interest in participating in the review of that chapter or group. The persons will be asked to send any suggested changes in writing to the Division by a date specified. If it is felt a workshop would be helpful, a workshop date will be scheduled after the deadline for submission of written suggestions. The purpose of the workshop, which may cover more than one chapter, will be to discuss all suggested changes, whether initiated by staff or other interested persons. After the workshop, staff will review all suggested changes, and will determine which to recommend to the Board to include in a notice of intended action. The Board will make the final determination of what changes should be included in the Assessment Report. The Division will then include these changes in the Assessment Report submitted to the Governor's Office. After the Governor's Office conference and final schedule approval, the Division will initiate formal rule making procedures regarding the suggested changes. The Division may change the rules based on suggestions received during the informal process, and on comments received during the formal rule making process. A person who does not choose to participate in the informal preliminary review process may still make comments during the formal rule making process and those comments will be considered by the Division.

The following schedule contains several specified target dates, and other dates that are dependent on the specific needs of each chapter's review. The Division believes it is critically important that each chapter's review proceed as efficiently as possible, and that the exact timetable of the review be decided as appropriate depending on the complexity of the issues involved and number of suggested changes by both staff and other interested persons. In addition, if the electric restructuring bill passes, this plan will be modified and resubmitted, and review of chapters with electric implications will be done concurrently with promulgation of rules pursuant to the new bill. Under H.F. 740 proposed last year, the Division would be required to promulgate 40-50 sets of rules as a result of the bill. Whether this will be required under a new bill, what rules will be needed, and the form they will take, will not be known until after passage of the bill. Clearly, the timing and substance of review of existing rules relating to the electric industry will be heavily dependent on the requirements of any electric restructuring bill.

The groups of rules and their corresponding chapters are listed as follows:

Group 1 – General Procedural and Administrative Rules (not complicated)

Chapter 1 – Organization and Operation
Chapter 2 – Forms
Chapter 3 – Rulemaking
Chapter 4 – Declaratory Orders
Chapter 29 – Management Efficiency Stds
Chapter 30 – Tax Reform Revenue Adjustment

Group 2 – Energy

Energy Efficiency Subgroup

Chapter 27 – Iowa Save America's Vital Energy
Chapter 28 – Iowa Supplemental Energy Conservation Plan

Chapter 35 – Energy Efficiency
Chapter 36 – Energy Efficiency for Non-rate regulated utilities

Technical Sections & Metering Subgroup

Parts of the following chapters which relate to energy:

Chapter 19 – Service Supplied by Gas Utilities
Chapter 20 – Service Supplied by Electric Utilities
Chapter 21 – Service Supplied by Water Utilities

Customer Service Subgroup

Chapter 6 – Complaint Procedures and

Parts of the following chapters which relate to energy customer service:

Chapter 19 – Service Supplied by Gas Utilities
Chapter 20 – Service Supplied by Electric Utilities
Chapter 21 – Service Supplied by Water Utilities

Accounting and Affiliates Subgroup

Parts of the following chapters which relate to energy:

Chapter 16 – Accounting
Chapter 18 – Utility Records
Chapter 23 – Annual Report
Chapter 31 – Access to Affiliate Records, Requirements for Annual Filings,
And Asset and Service Transfers
Chapter 32 – Reorganization
Chapter 33 – Nonutility Activities Record Keeping and Cost Allocation
Chapter 34 – Nonutility Service

Extension Policy Subgroup

Parts of the following chapters which relate to energy:

Chapter 19 – Service Supplied by Gas Utilities
Chapter 20 – Service Supplied by Electric Utilities

Power Plant Related Subgroup

Chapter 15 – Cogeneration and Small Power Production
Chapter 24 – Location and Construction of Electric Generating Facilities

Group 3 – Telephone

Chapter 5 – Procedure for Determining the Competitiveness of a
Communications Service or Facility
Chapter 22 – Rates and Service by Telephone Utilities
Chapter 37 – Equipment Distribution Program
Chapter 38 – Local Exchange Competition
Chapter 39 – Universal Service
Rule 16.5 – Uniform system of accounts – telephone

Parts of the following chapters related to telephone:

Chapter 6 – Complaint Procedures

Chapter 18 – Utility Records

Chapter 23 – Annual Report

Chapter 31 – Access to Affiliate Records, Requirements for Annual Filings,
And Asset and Service Transfers

Group 4 – Procedural and Administrative Rules (Complicated)

Chapter 7 – Practice and Procedure

Chapter 8 – Civil Penalties

Chapter 17 – Assessments

Group 5 – Safety & Engineering

Chapter 9 – Protection of Underground Improvements/Restoration
After Pipeline Construction

Chapter 10 – Intrastate Gas Pipelines and Underground Storage

Chapter 11 – Electric Lines

Chapter 12 – Interstate Gas Pipelines

Chapter 13 – Hazardous Liquid Pipelines

Chapter 25 – Iowa Electric Safety Code

New Chapter 14 – Practice & Procedure for Electric Franchise & Pipeline Permit
Filings

The Division plans to submit a separate Assessment Report for each of the above groups of rules, rather than a single report as specified in Executive Order Eight. Once we have gone through the process of meeting with constituent groups and have decided on proposed rule changes, it is important that those changes move forward into formal rulemaking as quickly as possible. If all agencies submit their assessment reports with numerous proposed rule changes on November 1, 2001, it will be difficult for the Administrative Rules Coordinator to review and approve the proposed changes very quickly. In addition, if all agencies have their proposed changes approved at approximately the same time and submit those changes for publication in the Iowa

Administrative Bulletin, there could be an overload of the system. Therefore, a separate assessment report will be submitted upon completion of the review process for each group of rules, with the hope that it may be reviewed and formal rule making be initiated more quickly.

Anticipated Schedule

March 1, 2000: Board issues an order which includes this plan, sends the plan to the Governor, and publishes this plan on the Division's website. Group and subgroup managers are chosen.

May 1, 2000: Interested persons must submit their names, addresses, telephone and fax numbers, and e-mail addresses to the Division, and state whether they wish to participate in review of all chapters or groups, or only certain listed chapters or groups.

Group 1 and Group 5 Rules. April 1, 2000: Board staff assigned to review of chapters; begin initial review and draft suggested changes. Gather written criticisms and waiver requests during the previous five years for each chapter. Approximately June 1, 2000: draft changes given to Board for review. Board gives comments if any to staff. Approximately July 1, 2000, suggested changes are sent to interested persons and requests for further suggestions are issued. At same time, suggested changes are given to other group/subgroup managers. Approximately August 15, 2000, deadline for suggestions to be submitted to the Division. If needed, approximately September 15, 2000, workshop regarding all suggestions held. Staff drafts proposed rules, provides them to other group/subgroup managers, and obtains Board approval for proposed changes.

Approximately December 15, 2000, checklist and proposed rules to Agency Rules Administrators (ARAs). ARAs draft Group 1 and Group 5 Assessment Report and submit to Board for approval. Approximately January 15, 2001, Group 1 and Group 5 Assessment Report submitted to the Governor. After meeting with Administrative Rules Coordinator and approval of Group 1 and Group 5 rule changes, notice of intended action for formal rule making on Group 1 and Group 5 rules published in IAB; formal rule making proceeds.

Group 2 Rules. July 1, 2000: Board staff assigned to review of chapters; begin initial review and draft suggested changes. Gather written criticisms and waiver requests during the previous five years for each chapter. Approximately September 1, 2000: draft changes given to Board for review. Board gives comments if any to staff. Approximately October 1, 2000, suggested changes are sent to interested persons, and requests for further suggestions are issued. At same time, suggested changes are given to other group/subgroup managers. Approximately November 15, 2000, deadline for suggestions to be submitted to the Division. If needed, approximately December 15, 2000, workshop regarding all suggestions held. Staff drafts proposed rules, provides them to other group/subgroup managers, and obtains Board approval for proposed changes. Approximately March 15, 2000, checklist and proposed rules to Agency Rules Administrators (ARAs). ARAs draft Group 2 Assessment Report and submit to Board for approval. Approximately April 15, 2001, Group 2 Assessment Report submitted to the Governor. After meeting with Administrative Rules Coordinator and approval of Group 2 rule changes, notice of intended action for formal rule

making on Group 2 rules published in IAB; formal rule making proceeds. Please note: if electric restructuring passes during the 2000 session, an extension may be required for some Group 2 rules. Alternatively, compliance with statutory deadlines for promulgation of rules may have to take precedence over Executive Order Eight procedures. The Division may need priority status for approval of Group 2 rule changes by the Administrative Rules Coordinator.

Group 3 Rules. September 1, 2000: Board staff assigned to review of chapters; begin initial review and draft suggested changes. Gather written criticisms and waiver requests during the previous five years for each chapter. Approximately November 1, 2000: draft changes given to Board for review. Board gives comments if any to staff. Approximately December 1, 2000, suggested changes are sent to interested persons, and requests for further suggestions are issued. At same time, suggested changes are given to other group/subgroup managers. Approximately January 15, 2000, deadline for suggestions to be submitted to the Division. If needed, approximately February 15, 2000, workshop regarding all suggestions held. Staff drafts proposed rules, provides them to other group/subgroup managers, and obtains Board approval for proposed changes. Approximately May 15, 2000, checklist and proposed rules to Agency Rules Administrators (ARAs). ARAs draft Group 3 Assessment Report and submit to Board for approval. Approximately June 15, 2001, Group 3 Assessment Report submitted to the Governor. After meeting with Administrative Rules Coordinator and approval of Group 3 rule changes, notice of intended action for formal rule making on Group 3 rules published in IAB; formal rule making proceeds.

November 1, 2000: Inventory of rules submitted to the Governor's Office.

Group 4 Rules. November 1, 2000: Board staff assigned to review of chapters; begin initial review and draft suggested changes. Gather written criticisms and waiver requests during the previous five years for each chapter. Approximately January 1, 2001: draft changes given to Board for review. Board gives comments if any to staff. Approximately February 1, 2001, suggested changes are sent to interested persons, and requests for further suggestions are issued. At same time, suggested changes are given to other group/subgroup managers. Approximately March 15, 2001, deadline for suggestions to be submitted to the Division. If needed, approximately April 15, 2001, workshop regarding all suggestions held. Staff drafts proposed rules, provides them to other group/subgroup managers, and obtains Board approval for proposed changes. Approximately July 15, 2001, checklist and proposed rules to Agency Rules Administrators (ARAs). ARAs draft Group 4 Assessment Report and submit to Board for approval. Approximately August 15, 2001, Group 4 Assessment Report submitted to the Governor. After meeting with Administrative Rules Coordinator and approval of Group 4 rule changes, notice of intended action for formal rule making on Group 4 rules published in IAB; formal rule making proceeds.

Dec 31, 2002: Final Report submitted to the Governor's Office.

Ongoing Review

After completion of the above rule review and promulgation process, the Board will continue to review its rules in the following ways. As the Board

promulgates new and revised rules, Board staff will review rules in the same chapter, or those related to the same subject, to determine whether additional changes need to be made. If a request for review of a rule is submitted to the Board by the administrative rules coordinator pursuant to Iowa Code § 17A.7(2) (as amended by the 1998 Iowa Acts), Board staff will review the rule as requested.